

tips which can be collected by the employer from wages (exclusive of tips) of such employee or from funds furnished to the employer by the employee, the employer shall furnish to the employee a statement showing the amount of the excess. For provisions relating to the collection of, and liability for, employee tax on tips, see § 31.3102-3.

(b) *Form of statement.* Form W-2 is the form prescribed for use in furnishing the statement required by paragraph (a) of this section, except that if an employer files a composite return pursuant to § 31.6011(a)-8 he may furnish to the employee, in lieu of Form W-2, a statement containing the required information in a form suitable for retention by the employee. A statement is required under this section in respect of an excess referred to in paragraph (a) of this section, even though the employer may not be required to furnish a statement to the employee under § 31.6051. Provisions applicable to the furnishing of a statement under § 31.6051 shall be applicable to statements under this section.

(c) *Excess to be shown on statement.* If there is an excess in respect of the tips reported by an employee in two or more statements furnished pursuant to section 6053(a), only the total excess for the period covered by the employer statement shall be shown on such statement.

[T.D. 7001, 34 FR 1005, Jan. 23, 1969, as amended by T.D. 7351, 40 FR 17145, Apr. 17, 1975]

§ 31.6053-3 Reporting by certain large food or beverage establishments with respect to tips.

(a) *Information return by an employer with respect to tips—*(1) *In general.* An employer shall file a separate information return for each calendar year (as defined in paragraph (j)(14) of this section) with respect to each large food or beverage establishment (as defined in paragraph (j)(7) of this section) in which such employer has employees. The information return shall contain the following:

(i) The employer's name, address, and employer identification number;

(ii) The establishment's name, address, and identification number (see paragraph (a)(5) of this section);

(iii) The aggregate gross receipts (other than nonallocable receipts) of the establishment from the provision of food or beverages;

(iv) The aggregate amount of charge receipts (other than nonallocable receipts) on which there were charged tips;

(v) The aggregate amount of charged tips shown on such charge receipts;

(vi) The aggregate amount of tips actually received by food or beverage employees of the establishment during the calendar year and reported to the employer under section 6053(a) (see paragraph (j)(15) of this section);

(vii) The aggregate amount the employer is required to report under section 6051 and the regulations thereunder with respect to service charges of less than 10 percent.

(viii) The name and social security number of each employee of the establishment during the calendar year to whom an allocation was made under section 6053(c)(3) and paragraph (d) of this section and the amount of such allocation.

(2) *Calendar year 1983 information return.* In the case of the 1983 calendar year information return, the information required by paragraphs (a)(1)(iii) through (viii) of this section shall be reported for the period beginning with the first payroll period ending on or after April 1, 1983, and ending with the end of the 1983 calendar year. See paragraph (c) of this section relating to information required for the first quarter of 1983.

(3) *Prescribed form.* The return required by this paragraph shall be made on Form 8027 with the transmittal form being Form 8027T. The information required by paragraph (a)(1)(viii) of this section may be provided by attaching to Form 8027 photocopies of each employee's W-2 for whom an allocation was made. A copy of any written good faith agreements applicable to a given calendar year (see paragraph (e) of this section) shall be attached to Form 8027 for such calendar year.

(4) *Time and place for filing.* The information return required by this paragraph shall be filed on or before the last day of February of the year following the calendar year for which the return is made with the Internal Revenue

Service Center specified by the Form 8027 or its instructions. See section 6652(a) relating to the penalty for failure to file this information return.

(5) *Large food or beverage establishment identification number.* Each large food or beverage establishment shall have a unique identification number to be included on Form 8027 and any employer's application pursuant to paragraph (h) of this section. If an identification number is changed for any reason, for example if the establishment becomes a different "type" of establishment as described in paragraph (a)(5)(ii) of this section, or if the employer identification number changes, the employer shall notify the Service by including both the old and new identification numbers on the Form 8027 filed for the year in which the identification number was changed. An establishment identification number shall be determined as follows:

(i) The first nine digits shall be the employer's identification number (EIN).

(ii) The next digit shall identify the type of large food or beverage establishment, with the categories as follows:

(A) The number "1" signifies an establishment that serves evening meals only (with or without alcoholic beverages).

(B) The number "2" signifies an establishment that serves evening meals and other meals (with or without alcoholic beverages).

(C) The number "3" signifies an establishment that serves only meals other than evening meals (with or without alcoholic beverages).

(D) The number "4" signifies an establishment that serves food, if at all, as only an incidental part of the business of serving alcoholic beverages.

(iii) The last five digits are to differentiate between multiple establishments reporting under the same EIN number. For this purpose, the employer shall assign each establishment reporting under such employer's EIN number a unique five digit number. For example, each establishment could be assigned a unique number by beginning with "00001" and progressing in numerical sequence (*i.e.*, "00002", "00003",

"00004", "00005") until each establishment has been assigned a number.

(6) *Definitions.* See paragraph (j) of this section for definitions of various terms used in this section.

(b) *Employer statement to employees—*

(1) *In general.* The employer shall furnish to each employee to whom an amount is allocated under section 6053(c)(3) and paragraph (d) of this section a written statement for each calendar year containing the following information:

(i) The employer's name and address;
(ii) The name of the employee;
(iii) The aggregate amount allocated to the employee for the calendar year.

(2) *Prescribed form.* The written statement required by this paragraph shall be made on Form W-2.

(3) *Time and manner for furnishing the statement.* The written statement required by this paragraph shall be due at the same time and shall be furnished in the same manner as the statement required to be furnished under section 6051. See section 6678 relating to the penalty for failure to file this statement.

(4) *Employee's request for an early W-2.* If an employee's employment is terminated prior to the end of a calendar year and the employee requests an early W-2 under section 6051 and § 31.6051-1(d), a tip allocation under section 6053(c) is not required to be shown on such early W-2. However, the employer may include on such early W-2 the employee's actual tip allocation under section 6053(c), if known, or a good faith estimate of such allocation. A good faith estimate of an allocation shall be signified by placing the word "estimate" next to the allocation on the employee's copy of the early W-2. An amended W-2 must be furnished to each employee to whom an amount is allocated under section 6053(c), during January of the calendar year following the calendar year for which the statement is made, if there is no tip allocation on the early W-2 or if the estimated allocation is found to vary from the actual allocation by more than 5 percent of the amount of the actual allocation.

(5) *Employee reporting of tip income.* Regardless of whether an employee receives an allocation under section

6053(c) and § 31.6053-3, the employee is required to report as income on his or her Federal income tax return all tips received. For tips received before October 1, 1985, an employee must be able to substantiate the amount of reported tip income as provided in section 6001 and the regulations thereunder. For tips received on or after October 1, 1985, an employee must be able to substantiate the amount of reported tip income as provided in § 31.6053-4. The Internal Revenue Service may determine that a tipped employee received a larger amount of tip income than is reflected by the employee's allocation.

(c) *First quarter report of 1983*—(1) *In general.* For the period beginning with the first day of calendar year 1983, and ending on the last day of the last payroll period ending before April 1, 1983, an employer must file an information return for each large food or beverage establishment that was a large food or beverage establishment on January 1, 1983, that contains the information required by paragraph (a)(1)(i)-(vii) of this section for such period.

(2) *Prescribed form.* The information return required by this paragraph shall be made on Form 8027. The returns for the first calendar quarter of 1983 and for calendar year 1983 may be incorporated onto a single Form 8027 but must separately set forth the required information for each of the two return periods.

(3) *Time and place for filing.* The time and place for filing the information return required by this paragraph shall be the same as for the calendar year 1983 information return. See paragraph (a)(4) of this section.

(d) *Allocation of excess of 8 percent of gross receipts over the aggregate amount of reported tips*—(1) *In general.* An employer that operates a large food or beverage establishment shall allocate (as tips for purposes of the requirements of section 6053(c)) among tipped employees at such establishment performing services during any payroll period an amount equal to the excess of:

(i) Eight percent of the gross receipts (other than nonallocable receipts) of such establishment for the payroll period, over

(ii) The aggregate amount of tips reported by employees at such establish-

ment to the employer under section 6053(a) for such period. For this purpose, if an employee reports under section 6053(a) on the basis of a period other than a payroll period such employee may specify what portion of his or her reported tips are attributable to a given payroll period when reporting tips to the employer under section 6053(a). In the absence of any specification by the employee, the employer shall allocate the amount of tips reported by an employee to a given payroll period either:

(A) By multiplying the aggregate amount of those reported tips by a fraction, the numerator of which is the gross receipts attributable to the tipped employee for the payroll period and the denominator of which is the gross receipts attributable to the employee for the entire tip reporting period; or

(B) By multiplying the aggregate amount of those reported tips by a fraction, the numerator of which is the hours worked by the employee during the payroll period and the denominator of which is the total hours worked by the employee during the entire tip reporting period.

With respect to each establishment, the employer shall choose the method described in either paragraph (d)(1)(ii)(A) or paragraph (d)(1)(ii)(B) of this section for a calendar year and apply such method consistently in making all allocations required by the preceding sentence. If an employee is employed in more than one of an employer's food or beverage operations, such employee may specify what portion of his or her reported tips are attributable to a given operation when reporting tips to the employer under section 6053(a). In the absence of any specification by the employee, the employer shall allocate the amount of tips reported by the employee to a given food or beverage operation in a manner similar to that provided above for allocation of tips among payroll periods. The employer shall choose the method described in either paragraph (d)(1)(ii)(A) or paragraph (d)(1)(ii)(B) of this section for a calendar year and apply such method consistently in making all allocations required by the preceding sentence.